

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STANLEY LAJAN SMITH, JR.,

Defendant-Appellant.

UNPUBLISHED

June 24, 2014

No. 314966

Genesee Circuit Court

LC No. 11-028754-FC

Before: DONOFRIO, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

Defendant, Stanley Lajan Smith, Jr., appeals by right his jury convictions of second-degree murder, MCL 750.317, two counts of first-degree felony murder, MCL 750.316(1)(b), two counts of armed robbery, MCL 750.529, first-degree premeditated murder, MCL 750.316(1)(a), possessing a firearm while ineligible (felon-in-possession), MCL 750.224f, and possessing a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced Smith to serve life in prison for each count of first-degree murder and armed robbery, to serve 40 to 60 months in prison for the felon-in-possession conviction, and to serve two years in prison for the felony-firearm conviction.¹ Because we conclude there were no errors warranting relief, we affirm.

Smith's convictions arise from a November 2010 double murder and robbery at a duplex apartment in Flint, Michigan. At trial, there was testimony that Smith and Delante Russell went to the duplex to rob Martarien Wilson of marijuana and money. After taking Wilson's marijuana, Smith shot and killed Wilson. Around the same time, Porsche Turner came downstairs and Smith shot and killed her too.

¹ The trial court vacated Smith's conviction of second-degree murder and merged counts four and five.

Russell testified against Smith and identified him as the shooter. Wilson's girlfriend, Tanescia Russey, who was hiding upstairs during the shooting and recognized Smith's voice, also testified against Smith. Russey's testimony strongly suggested that Smith acted as the leader during the robbery and shot both victims. Smith's lawyer did not dispute that Smith was present during the robbery and shootings, but argued that the evidence showed that Russell was the real killer. The jury rejected Smith's version of events and convicted him as stated.

Smith first argues that the trial court violated his constitutional right to confront the witnesses against him when it refused to let his lawyer ask Officer Terry Coon a follow-up question after Coon answered a question from the jury on blood found at the scene. This Court reviews de novo questions of constitutional law. *People v Rose*, 289 Mich App 499, 505; 808 NW2d 301 (2010).

A defendant has the right to confront the witnesses against him or her. *People v Yost*, 278 Mich App 341, 369-370; 749 NW2d 753 (2009). The right to confront witnesses generally includes the right to have the witness testify in person, under oath, subject to cross-examination, and with the jury able to observe the witness' demeanor. *Rose*, 289 Mich App at 513-514; *Yost*, 278 Mich App at 370. Although the right to confront includes the right to cross-examine, the "right of cross-examination is not without limit; neither the Confrontation Clause nor due process confers an unlimited right to admit all relevant evidence or cross-examine on any subject." *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993); see also *Rose*, 289 Mich App at 509 (noting that trial courts have the inherent authority to control their courtrooms). Rather, the trial court retains the discretion to control the scope of cross-examination and whether and to what extent jurors may ask questions. *People v Heard*, 388 Mich 182, 188; 200 NW2d 73 (1972); *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992).

Here, Coon testified under oath and in person. Smith's lawyer also had a full opportunity to cross-examine him before the jury's question, and the jury had the opportunity to observe his demeanor throughout his testimony. The trial court's only action to limit Smith's right to confront Coon was its refusal to allow a follow-up question after Coon answered a question submitted by the jury.

On appeal, Smith has not adequately addressed how the trial court's decision to limit his lawyer's follow-up question prejudiced his trial. Given that the primary issue at trial was identity—specifically, whether it was Smith or Russell who shot the victims—it is difficult to imagine how one follow-up question concerning the blood found at the scene of the shooting would have so impeached the testimony implicating Smith as the shooter that the refusal to allow the question could constitute prejudicial error. Thus, even if we were to conclude that the trial court erred when it refused to let Smith's lawyer ask a follow-up question, that error would not warrant any relief. The trial court's decision to preclude Smith's lawyer from asking any further questions, was plainly harmless—indeed, harmless beyond a reasonable doubt. See *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

Smith also argues that the prosecutor deprived him of a fair trial by failing to conduct a thorough investigation and by improperly commenting on his silence. Smith's lawyer did not preserve these claims of error by objecting at trial. *People v Bennett*, 290 Mich App 465, 475; 802 NW2d 627 (2010). This Court reviews unpreserved claims of prosecutorial error for plain error affecting substantial rights. *Id.*

In the brief that he submitted on his own behalf, Smith argues that investigators "tampered" with the crime scene, but fails to distinguish between tampering and investigating. For example, Smith complains that a paramedic moved Wilson's body "to the center of the kitchen and flip[ped] him on his back," without citing the record or arguing that the paramedic's actions were improper. Similarly, he complains that emergency medical technicians, paramedics, and police officers were "rumbling through the house before anybody secure[d] the scene," that an officer "remov[ed] items from the kitchen," and that Coon failed to use unspecified "equipment stationed in his van for this particular crime scene." Without explaining how he was prejudiced by these alleged errors, Smith has not established that there was error warranting relief. *Carines*, 460 Mich at 763.

Smith also argues that officers should have obtained Wilson's cell phone records to determine who called him minutes before the shooting. However, a criminal defendant does not have a constitutional right to have the prosecution or police officers assist in developing potentially exculpatory evidence. *People v Anstey*, 476 Mich 436, 461; 719 NW2d 579 (2006). Further, Smith's lawyer cross-examined the officer-in-charge on this issue and used the fact that there was no evidence that Smith called Wilson during closing argument. On redirect examination, the officer-in-charge testified that Russell's number did not appear in the list of calls Wilson received shortly before the shooting, and the prosecutor implied that Smith used a disposable cell phone that would be difficult to trace. Because the prosecutor had no obligation to assist the defense's investigation and the prosecutor's remarks were otherwise proper, Smith has not established prosecutorial error warranting relief. *Bennett*, 290 Mich App at 475.

Smith also argues that, during closing remarks, the prosecutor improperly implied that Smith had a duty to present evidence to defend himself and that the prosecutor encouraged the jury to infer that he was guilty by arguing that the elements of felony murder were not in dispute. "Prosecutorial comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial." *People v Brown*, 279 Mich App 116, 135; 755 NW2d 664 (2008).

During closing remarks, the prosecutor argued that numerous facts were undisputed:

Third, [Wilson] and [Turner] were present; that's not in dispute. They're there; they're dead. Fourth,[] in committing a larceny, Stanley Smith possessed a weapon designed to be dangerous and capable of causing death or serious bodily injury. I don't think there's any dispute that a firearm is such a weapon. Fifth, Stanley Smith inflicted aggravated assault or serious injury on [Wilson] and [Turner] while he was committing a larceny. That is also not in dispute.

Contrary to Smith's argument, the prosecutor did not comment on Smith's silence and did not imply that he was guilty because he failed to present a defense. "[A] prosecutor's argument that inculpatory evidence is undisputed does not constitute improper comment." *People v Fyda*, 288 Mich App 446, 464; 793 NW2d 712 (2010). When examined in context, it appears that the prosecutor was arguing that the fatal gunshot wounds Wilson and Turner sustained were sufficient to satisfy the assault-or-injury element of armed robbery and that the evidence showed that Smith fired those gunshots. The prosecutor's remarks were proper commentary on the evidence and did not impair Smith's right to a fair trial.

There were no errors warranting relief.

Affirmed.

/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly